

PLEASE READ THIS NOTICE CAREFULLY. YOU MAY BE ENTITLED TO MONEY FROM A CLASS ACTION SETTLEMENT.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

If you worked in California for Advantage Sales & Marketing LLC and held a position titled exempt Customer Development Manager-Retail (“CDMR”) for any period of time between January 1, 2017 and December 31, 2018, a class action lawsuit may affect your rights.

A court ordered this notice. This is not a solicitation from a lawyer.

Plaintiffs Wilma Foster, Adam Thimons, and Kimberley Schmidt, current and former CDMRs, sued Advantage Sales & Marketing LLC d/b/a Advantage Solutions (“Advantage” or “Defendant”) alleging that Defendant violated various provisions of the California Labor Code, California Business and Professions Code, and federal Fair Labor Standards Act, including for allegedly failing to pay overtime wages. The lawsuit is known as *Foster, et al. v. Advantage Sales and Marketing*, Civil Action No. 3:18-cv-07205-LB.

- The purpose of this Notice is to inform you of a proposed settlement (the “Settlement”) of the case. The Settlement is on behalf of two groups of exempt CDMRs, one group who worked in California at any time between January 1, 2017 and December 31, 2018 (“California Class”). The other group consists of exempt CDMRs who worked in any state other than California at any time between January 1, 2017 and December 31, 2018 (“Non-California Opt-In Eligible Plaintiffs”).
- Because Advantage’s records show that you qualify as a California Class Member, you will receive money from the Settlement if the Court grants final approval of the Settlement, unless you decide to “opt out” of the Settlement.
- Your legal rights may be affected whether you act or do not act. Read this notice carefully. If you have questions, you can contact the lawyers for the Plaintiffs (listed at the end of this Notice).
- Notwithstanding the terms of this settlement, Advantage denies any wrongdoing.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
DO NOTHING	You WILL be mailed a Settlement payment in the approximate amount stated on <u>Attachment A</u> to this Notice, unless the Court decides not to grant “final approval” of the Settlement. By receiving a payment, you will be bound by the terms of the Settlement.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
OBJECT	You can ask the Court to deny approval by filing an objection. You cannot ask the Court to order a different settlement; the Court can only approve or reject the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object. Any objection to the proposed settlement must be in writing. If you file a timely written objection, you may, but are not required to, appear at the Final Approval Hearing, either in person or through your own attorney. Your objection must be post marked by February 6, 2020 . If you submit an objection, you will still be deemed a California Class Member, covered by the Settlement’s terms, and you will receive money from the Settlement.
ASK TO BE EXCLUDED	If you do not wish to participate in the Settlement, you must send a letter requesting exclusion. You will get no payment in the Settlement. You will keep the right to sue the Defendant on your own about the claims resolved by this Settlement. Your request for exclusion must be post marked by February 6, 2020 .

This Notice explains your rights and options in detail. **To ask to be excluded (opt out) or to object to the settlement, you must follow the steps described in this Notice no later than February 6, 2020.**

YOUR ESTIMATED SETTLEMENT AMOUNT: Enclosed with this Notice is an individualized Statement of Weeks Worked Form (“Attachment A”), which will state your estimated settlement amount. The amount is calculated based on the number of weeks you worked in California as an exempt CDMR during the period from January 1, 2017 to December 31, 2018. If there are errors on the form, you can follow the steps on the form to submit corrections. Any corrections must be submitted no later than February 6, 2020.

* * *

MORE DETAILED INFORMATION

I. WHAT IS THIS CASE ABOUT?

The purpose of this Notice is to inform you that your rights may be affected by the proceedings in a class and collective action lawsuit pending in the United States District Court for the Northern District of California (the “Court”) entitled Wilma Foster, individually and on behalf of all those similarly situated v. Advantage Sales and Marketing, LLC d/b/a Advantage Solutions, Case No. 3:18-cv-07205-LB. This Notice is given by Order of the Court.

Wilma Foster, Adam Thimons, and Kimberley Schmidt (“Plaintiffs”) bring this case on behalf of all California Class Members (exempt CDMRs who worked in California at any time between January 1, 2017 and December 31, 2018) and Non-California Opt-In Eligible Plaintiffs (exempt CDMRs who worked in any state other than California at any time between January 1, 2017 and December 31, 2018).

The case alleges that Defendant failed to pay overtime wages to the California Class Members and the Non-California Opt-In Eligible Plaintiffs in violation of the federal Fair Labor Standards Act. The case also alleges violations of California laws with respect to the California Class Members only, which are that Defendant (1) failed to pay overtime wages due for overtime hours worked under California law; (2) failed to provide legally required meal periods or pay premium pay due for such failure; (3) failed to provide legally required rest periods or pay premium pay due for such failure; (4) failed to furnish accurate itemized wage statements or failed to maintain adequate payroll records; (5) failed to timely pay wages or pay all wages due upon termination of employment; (6) violated the unfair competition laws (Business & Professions Code §§17200, *et seq.*); and (7) violated the California Labor Code Private Attorney's General Act ("PAGA").

Advantage denies engaging in any unlawful conduct as alleged in this case and continues to deny the claims and charges of wrongdoing and liability.

II. WHAT ARE THE TERMS OF THE SETTLEMENT?

Advantage denies that it owes money related to any of the allegations listed above. Advantage is settling the matter as a compromise and to avoid incurring unnecessary legal expense defending the matter. Advantage reserves the right to object to any claim if for any reason the Settlement is not approved.

The Settlement applies to all California Class Members who do not timely submit a correctly completed Opt Out Letter. The determination of how much each California Class Member will receive as part of this Settlement depends on the number of weeks worked within the California Class Period during which the California Class Member worked as an exempt CDMR ("Qualifying Work Weeks").

The parties reached a Settlement in which Advantage's total maximum liability will not exceed \$1,200,000.00 ("Settlement Fund") plus the employer's share of payroll taxes. The Settlement Fund allocates \$600,000.00 for California Class Members and \$600,000.00 for Non-California Opt-In Eligible Plaintiffs. All amounts to be paid by Advantage from the Settlement Fund shall be paid to a qualified settlement fund ("Qualified Settlement Fund"), which shall be administered by Atticus, the Settlement Administrator.

California Class Members may participate in the Settlement. California Class Members will not pay any out-of-pocket costs.

There was a hearing on December 5, 2019 in the United States District Court for the Northern District of California. On December 9, 2019, the Court conditionally granted preliminary approval of the California class action settlement and nationwide FLSA settlement and directed that you receive this Notice.

A. Additional Payments from the Maximum Settlement Amount

The "Net Settlement Fund" is the portion of the Settlement Fund eligible for distribution to California Class Members who do not timely submit an Opt Out Letter plus the amounts allocable to Non-California Opt-In Eligible Plaintiffs minus the payments below, which are subject to final approval from the Court.

1. Fee and Cost Award for Class Counsel

Class Counsel filed the case on behalf of Plaintiffs and all other similarly situated individuals.

Class Counsel investigated the facts, conducted informal discovery, and negotiated the settlement of this matter. Class Counsel will request attorneys' fees in an amount of up to \$400,000.00, which represents 33 1/3% of the Settlement Fund. Class Counsel will also request reimbursement of litigation costs and expenses in the amount of up to \$20,000.00. If approved by the Court, this amount will be paid from the Settlement Fund. These attorneys' fees and costs shall compensate Class Counsel for the work they have performed and will perform, and the expenses they have incurred and will incur, through any approved distribution of the Settlement Fund. Neither Non-California Opt-In Eligible Plaintiffs nor California Class Members will be personally responsible for any of Class Counsel's attorneys' fees and costs.

2. Service Award to the Class Representative

Class Counsel will also seek an enhanced recovery of no more than \$10,000.00 for Wilma Foster and no more than \$3,000.00 each for Adam Thimons and Kimberley Schmidt ("Service Awards") for serving as representative plaintiffs on behalf of the Settlement Class. Ms. Foster was the first person to step forward on behalf of the exempt CDMRs in the Settlement, and Mr. Thimons and Ms. Schmidt joined Ms. Foster to represent the exempt CDMRs later in the case. This will be in addition to whatever payment they are otherwise entitled to as a class member. If approved by the Court, this amount will be paid from the Settlement Fund.

3. Settlement Administration Costs

Settlement Administration Costs, estimated at no more than \$20,000, will be paid to the Settlement Administrator, Atticus, for its services, including but not limited to distributing Class Notices to Non-California Opt-In Eligible Plaintiffs and California Class Members (collectively "Settlement Class Members"), processing Opt Out Letters, calculating Settlement payments, and distributing Settlement payments to the Settlement Class Members.

4. Employer and Employee Tax Obligations

Once the amount of payment for each Settlement Class Member is determined, the Settlement Administrator will calculate the total amount of employee withholding taxes for the portion of the Settlement payment designated as wages as required by law. This total amount will be deducted from the Settlement Fund. Advantage will separately pay the employer withholding taxes on the Settlement payment designated as wages.

5. PAGA Penalties

The Settlement provides that \$10,000.00 shall be paid from the Net Settlement Fund allocated to the California Class Members to the State of California for its share of the settlement of claims brought under the Private Attorneys' General Act ("PAGA") ("PAGA Payment").

B. Release of Claims

The proposed settlement settles all claims and causes of action of any nature and description whatsoever, whether known or unknown, that are or which could have been asserted at any time in the case based on the facts alleged in the Second Amended Complaint.

The Released Claims for California Class Members who do not timely request exclusion and opt out of this Settlement include, any and all Wage Claims, as defined below in this paragraph, known or unknown, in law or in equity, whether or not concealed or hidden, asserted or which could have

been asserted at any time in the case based on the facts alleged in the case by Plaintiffs or any Settlement Class Member who does not timely request exclusion and opt out of this Settlement. Wage Claims means any claim, demand, right, liability, and/or cause of action from January 1, 2017 to the date the Court grants preliminary approval of the settlement and based on any California or federal law that relate to claims which were asserted or could have been asserted at any time in the case based on the facts alleged in the Second Amended Complaint by any Settlement Class Member that, Defendant (1) improperly failed to pay overtime or any other wages due for hours worked; (2) failed to provide legally required meal and rest periods or pay premium pay due for such failure; (3) failed to timely pay wages or pay all wages due upon termination of employment; (4) failed to maintain adequate payroll records; (5) failed to provide compliant wage statements; (6) engaged in conduct subjecting them to statutory or civil penalties under any California statute, ordinance, or otherwise arising from any alleged violation of the California Labor Code, California Wage Orders or any federal or California statute regarding compensation and hours, including without limitation, California Labor Code Section 2698, *et seq.* (“The Private Attorneys General Act of 2004” or “PAGA”) and Labor Code Sections 201, 202, 203, 226, 226.3, 226.7, 256, 510, 512, 558, 1174, 1174.5, 1194 and 1198.4; (7) engaged in any unfair business practices expressly alleged in the action pursuant to California Business & Professions Code Section 17200 *et. seq.*; and (8) violated any California or federal laws, including under the Fair Labor Standards Act (“FLSA”), based on any facts, transactions, events, occurrences, acts, disclosures, statements, omissions, or failures to act which were asserted or could have been asserted at any time in the case based on the facts alleged in the case (“Released Claims”). The effect of the Settlement extends to Defendant and its respective parents, subsidiaries, affiliates, predecessors, successors, directors, officers, employees and others, as more fully described in the Settlement Agreement (“Released Parties”).

This Settlement does not release claims that cannot be released as a matter of law.

By signing the settlement check that will be mailed to you by the Settlement Administrator, you shall be deemed to have opted-in for purposes of the Fair Labor Standards Act claims referred to in the Released Claims and release all Fair Labor Standards Act claims. You acknowledge and agree that California Labor Code section 206.5 is not applicable to the Parties hereto. That section provides in pertinent part as follows:

An employer shall not require the execution of any release of a release of a claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of those wages has been made.

III. IF I CHOOSE TO PARTICIPATE, HOW IS MY SHARE OF THE SETTLEMENT CALCULATED?

The California Class Members who do not Opt Out shall receive an amount based on the number of Qualifying Work Weeks, which is the number of weeks worked as an exempt CDMR during the Class Period in California.

To determine the value for each Qualifying Work Week, the Settlement Administrator will divide the Net Settlement Fund allocable to California Class Members, minus the PAGA Payment, by the total number of Qualifying Work Weeks worked by all California Class Members. That dollar amount equals the weekly recovery value (“Weekly Recovery”) for each Qualifying Work Week. Next, for each California Class Member, the Settlement Administrator shall compute the California Class Member’s Individual Payment Amount by multiplying the California Class

Member's total Qualifying Work Weeks by the Weekly Recovery.

Your estimated Individual Settlement Class Member payment is included on Attachment A.

IV. TAXABLE PORTION OF SETTLEMENT PAYMENTS

For purposes of tax payment obligations, one-third of each Individual Payment Amount to each California Class Member shall be treated as wages (subject to all required withholdings), one-third shall be treated as interest, and one-third shall be treated as penalties, liquidated damages, and other non-wage recovery. The allocations for interest, penalties, liquidated damages, and other non-wage recovery shall not be subject to withholdings or deductions and shall be reported as non-wage income.

An IRS Tax Form W-2 will be issued to each California Class Member with regard to the portion of the Settlement payments attributable to wages and any required IRS Tax Form 1099 will be issued with regard to the remaining portion of the Settlement payments. California Class Members should consult with their tax advisors concerning the tax consequences of the payments that they receive under the Settlement.

V. EFFECT OF ENDORSING AND CASHING THE SETTLEMENT CHECK

By signing the settlement check that will be mailed to you by the Settlement Administrator, you shall be deemed to have opted-in to the Settlement Class for purposes of the Fair Labor Standards Act claims referred to in the Released Claims.

VI. WHAT ARE MY RIGHTS AND OPTIONS AS A SETTLEMENT CLASS MEMBER?

You have three options under this Settlement, discussed below: (A) opt out from the Settlement, (B) object to the Settlement, or (C) do nothing.

A. If You Want To Request Exclusion From the Settlement

If you do not wish to participate in the Settlement, you must send an Opt Out Letter bearing a postmark no later than **February 6, 2020**. The Opt Out Letter must be sent to the Settlement Administrator at the following address: Foster v Advantage Settlement, c/o Atticus Administration, PO Box 64053, Saint Paul, MN 55164. The Opt Out Letter must: (1) legibly state your name, (2) state that you do not wish to participate in the Settlement, and (3) state that you request exclusion from the Settlement. Opt Out Letters must be made individually and cannot be made on behalf of a group of employees or on behalf of other Settlement Class Members. If you choose to opt out of the Settlement, you will not receive any money from the Settlement. Any such person, at his/her own expense, may pursue any claims he/she may have against Defendant. However, there are deadlines to pursuing such claims known as statutes of limitation. You may consult an attorney of your choice at your own expense to ensure you are not forever barred from pursuing any individual claims you might have if you decide to opt out of the Settlement.

The judgment will bind all Settlement Class Members who do not timely submit an Opt Out Letter.

B. If You Want To Object To The Settlement

You can ask the Court to deny approval by filing an objection. You cannot ask the Court to order a different settlement; the Court can only approve or reject the settlement. If the Court denies

approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object. The Court may approve or reject your objection.

Any objection to the proposed settlement must be in writing. If you file a timely written objection, you may, but are not required to, appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for hiring and paying that attorney. All written objections and supporting papers must (a) clearly identify the case name and number (Foster v. Advantage, Case Number 3:18-cv-07205-LB), (b) be submitted to the Court either by mailing them to the Class Action Clerk, United States District Court for the Northern District of California, 450 Golden Gate Ave., San Francisco, CA 94102, or by filing them in person at any location of the United States District Court for the Northern District of California, and (c) be filed or postmarked on or before **February 6, 2020**.

If you do not comply with this procedure, you may not be entitled to be heard at the Final Fairness and Approval Hearing or to otherwise contest the approval of the Settlement, or to appeal from any related orders or judgments of the Court. If you submit a valid and timely Opt Out Letter, you cannot object to the Settlement.

California Class Members are hereby notified that even if they object, they will still be deemed as California Class Members who will receive money from the Settlement and be bound by the Released Claims if the Court approves the Settlement. You will be covered by the Settlement unless you opt out.

C. If You Choose To Do Nothing

If you do nothing, and the Court approves the Settlement, you will be bound by the terms of the Settlement and the Released Claims and you will receive money under the Settlement in the form of a check mailed by the Settlement Administrator.

D. What if the Statement of Weeks Worked is incorrect?

If the weeks worked information or contact information on the Statement of Weeks Worked Form is incorrect, you should correct this information by completing and signing the enclosed Statement of Weeks Worked Form under penalty of perjury and mail it to the Settlement Administrator, with any supporting documents, no later than **February 6, 2020**. If the information is correct you do not need to do anything with the form. If you lose, misplace, or need another Statement of Weeks Worked Form, you should contact the Settlement Administrator.

VII. WHEN AND WHERE IS THE FINAL APPROVAL HEARING?

The Court will conduct a Final Fairness and Approval Hearing on March 12, 2020 in Courtroom B on the 15th Floor of the United States District Court for the Northern District of California located at 450 Golden Gate Ave., San Francisco, CA 94102. At that hearing, the Court will determine whether the Settlement should be finally approved. The Court also will be asked to approve Class Counsel's request for attorneys' fees and costs, and the Service Award to be paid to the Class Representative, and other payments discussed above. The date of the Final Fairness and Approval Hearing may be changed without further notice to the class. Class members should check the settlement website or the Court's PACER site to confirm that the date has not been changed.

VIII. WHAT IF I NEED MORE INFORMATION?

The foregoing is only a summary of the case and the proposed Settlement and does not purport to be comprehensive. You can find a copy of this Notice, the Complaint, the Settlement Agreement, the Motion for Preliminary Approval, the Order Granting Preliminary Approval, and when available, the Motion for Final Approval, the Motion for Service Awards and Attorneys' Fees and Costs, and, the Order Granting Final Approval at the following website <https://gbdhlegal.com/cases/advantage-sales-marketing-llc/>.

If you have any questions, you can call the Settlement Administrator at 1-888-207-0052, toll free. You may also contact Class Counsel to ask about the Class Action Settlement. Class Counsel's contact information is as follows:

Laura L. Ho (SBN 173179)
Byron Goldstein (SBN 289306)
GOLDSTEIN, BORGEN, DARDARIAN & HO
300 Lakeside Drive, Suite 1000
Oakland, CA 94612
advantagesettlement@gbdhlegal.com
Tel: (510) 763-9800
Fax: (510) 835-1417

Bruce C. Fox
Andrew J. Horowitz
OBERMAYER REBMANN MAXWELL
& HIPPEL LLP
500 Grant Street, Suite 5240
Pittsburgh, PA 15219
Tel: (412) 566-1500

In addition, the pleadings and other records in this case, including the Settlement Agreement, may be examined online on by accessing the Court docket in this case, for a fee, through the through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California, 450 Golden Gate Ave., San Francisco, CA 94102, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

**PLEASE DO NOT CONTACT THE CLERK OF THE COURT OR THE JUDGE WITH
INQUIRIES ABOUT THE SETTLEMENT**

STATEMENT OF WEEKS WORKED FORM

Wilma Foster, et al., individually and on behalf of all those similarly situated v. Advantage Sales & Marketing LLC d/b/a Advantage Solutions,

District Court for the Northern District of California

Case No. 3:18-cv-07205-LB

THIS FORM IS FOR YOUR INFORMATION ABOUT YOUR ESTIMATED SETTLEMENT SHARE. YOU DO NOT NEED TO DO ANYTHING WITH THIS FORM UNLESS THE INFORMATION ABOUT YOU ON THE FORM IS INCORRECT.

This Statement of Weeks Worked Form includes information based on the records of Advantage Sales & Marketing LLC d/b/a Advantage Solutions (“Advantage”). IT IS IMPORTANT THAT YOU CAREFULLY CHECK THE INFORMATION PERTAINING TO YOUR CONTACT INFORMATION IN PART I BELOW AND CORRECT ANY INACCURACIES. NOTE: If you wish to make any corrections, this Statement of Weeks Worked Form must be postmarked no later than **February 6, 2020** and received by the Settlement Administrator to be processed.

INSTRUCTIONS

This Statement of Weeks Worked Form is to provide you with an opportunity to verify your name and contact information and to correct any information regarding the timeframe you worked for Advantage in California as an exempt “Customer Development Manager-Retail” (hereinafter “CDMR”).

YOU DO NOT NEED TO COMPLETE THIS FORM TO SHARE IN AND RECEIVE THE SETTLEMENT PROCEEDS IN THIS LAWSUIT. IF YOU WANT TO CORRECT THE INFORMATION ON THIS FORM, YOUR COMPLETED AND SIGNED STATEMENT OF WEEKS WORKED FORM MUST BE POSTMARKED ON OR BEFORE FEBRUARY 6, 2020. YOU MUST SEND IT BY FIRST-CLASS UNITED STATES MAIL, OR THE EQUIVALENT, TO THE FOLLOWING ADDRESS:

Foster v Advantage Settlement
c/o Atticus Administration
PO Box 64053
Saint Paul, MN 55164

You should keep a copy of the completed Statement of Weeks Worked Form and record the date on which you mailed it for your records. If you would like an acknowledgment of receipt for these documents, please send them certified mail, return receipt requested. If you move, please send your new address to the Settlement Administrator at the address listed above.

Only Settlement Class Members or their legal representatives may submit a Statement of Weeks Worked Form. Any executor, administrator, guardian, conservator, or trustee who submits a Statement of Weeks Worked Form on behalf of a Settlement Class Member or his or her estate must (1) sign the Statement of Weeks Worked Form on the Settlement Class Member’s behalf; (2) indicate his or her title as representative (i.e., executor, trustee, etc.); and (3) submit proof of his or her authority to act on the Settlement Class Member’s behalf.

If you have questions about your claim or how to complete this Statement of Weeks Worked Form, you may call the Settlement Administrator at **1-888-207-0052**.

**ACCURATE CLAIMS PROCESSING TAKES A SIGNIFICANT AMOUNT OF TIME.
THANK YOU FOR YOUR PATIENCE.**

PART I: CLAIMANT IDENTIFICATION

«first_name» «last_name»
«address1» «address2»
«city», «state» «zip»

If any of the above contact information is inaccurate, please provide the correct information below:

Name (First, Middle, Last)

Name Used While Employed by either Advantage [if different from current name - First, Middle, Last]

Street Address: _____

City: _____ State: _____ Zip Code: _____

Telephone: home: (____) ____ - _____ Telephone: work/cell: (____) ____ - _____

PART II: EMPLOYMENT

Section A: Claim Based on Advantage’s Records

Advantage’s records indicate that between January 1, 2017 and December 31, 2018, you were employed in California by Advantage as an exempt CDMR.

From «hire_date» to «termination_date»

Based on the number of weeks worked above, your estimated Individual Payment Amount is \$«CA_Class_Award».

This Individual Payment Amount is based on the number of weeks worked by you as an exempt CDMR in California and the Weekly Recovery Value of those weeks as described in the attached Notice.

Section B: Claim Based on Information Provided by Settlement Class Member.

Complete this section only if you believe that the information set forth in Section A above is not accurate. When you return this Statement of Weeks Worked Form to the Settlement Administrator, you must also send any documentation that supports or relates to the information that you provide in this Section B. Please *do not* include any time periods (1) before January 1, 2017 or (2) after December 31, 2018.

These are the dates I was employed as an exempt CDMR in California:

From ____/____/____ to ____/____/____

From ____/____/____ to ____/____/____ (If employed more than once)

Please attach any records which document or support the dates you were employed as an exempt CDMR in California.

DECLARATION AND SIGNATURE

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing information is true and correct to the best of my knowledge.

DATED: ____/____/____

SIGNATURE

PRINT NAME